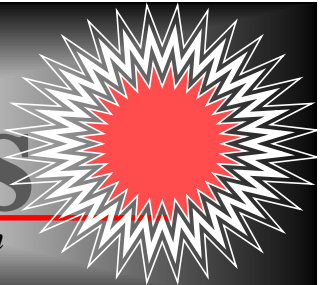


# Ethics News

Newsletter of the Indiana State Ethics Commission

Issue No. 23

March 2002



## Blowing the Whistle

It takes courage and a sense of duty to make an honest complaint against one's agency or co-workers. Those who do, often do so in fear of retaliation by a superior. Are whistleblowers protected by law or do they have to confront retaliation on their own?

The ethics law (IC 4-2-1-13) does protect a state employee who (1) files a complaint with the commission; (2) provides information to the commission; or (3) testifies at a commission proceeding.

What about an employee who does not act in good faith when taking the above listed actions? Or knowingly or recklessly provides false information or testimony to the commission? Such an employee may face appropriate action by a state officer or an employee.



Whistleblowers are often risk-takers, seldom seen as heroes. However, the recent Enron scandal, may just have paved the way for one of its employees, Sherron Watkins, to assume an heroic role. Her story, as a whistleblower, is retold in the following article.

(Note: Enron describes itself as a maker of "commodity markets so that we can deliver physical commodities to our customers at a predictable price.")

### Inside...

#### Front Page

- Hero

#### Page Two

- Ethics at Enron
- Hadley Returns

#### Page Three

- Advisory Opinions

#### Page Four

- Ethics Classes

#### Page Five

- Ethics Quiz
- Answers

---

## Will Enron Whistleblower Emerge a Hero?

(Reprinted with permission by the Global Institute for Ethics)

The fate of most corporate whistleblowers — persecution, pariah status, and blacklisting — may be escaped by Enron's Sherron Watkins, the executive who warned of her company's probable wrongdoing last August, according to an article last week from **BusinessWeek**.

"The history of whistleblowers is not pleasant to read. They usually don't get good treatment at the hands of their companies or future employers," Thomas Donaldson, business ethics professor at Wharton School at the University of Pennsylvania, told **BusinessWeek**.

Watkins may fare better than other whistleblowers because of two key points — her position at Enron, and her method of handling the matter, experts and ethicists contend.

Whereas many whistleblowers are disgruntled employees, Watkins had clout and respect at Enron, where she was vested and highly involved with management. Also to her benefit, Watkins framed her concerns in language meant to help the company and protect itself from imploding “in a wave of accounting scandals,” as she wrote in her memo to former Enron head Kenneth Lay.

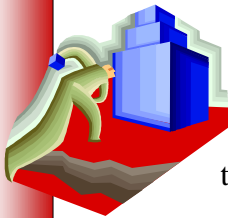
Instead of going public immediately with her worries, Watkins worked first to effect change from within. “She was clearly trying to act in the best interest of Enron” without condoning the company’s behavior, noted Steve Currall, an associate professor at the Jones Graduate School of Management at Rice University. “She could have gone to the press with that thing. But she was trying to keep it within Enron and bring the issues to the attention of the top executives.”

“Every now and then, a whistleblower so galvanizes public attention that the person becomes a kind of hero. Watkins may well achieve that status,” Wharton’s Donaldson added.

---

### More on Enron

One month after assuring employees and stockholders that Enron was on firm ground and looking forward to future earnings, the company filed bankruptcy.



In a commentary by Rushworth M. Kidder (Executive Director of Ethics Newslite, the newsletter of the Global Institute of Ethics), the complex ethical issues surrounding Enron are examined.

Click here to view [Ethics at Enron](#)

---

### Welcome Back!

### Hadley Rejoins Commission

David Hadley, Chairman of the Political Science Department at Wabash College, was appointed February 20 by Governor Frank O’Bannon to a four year term which expires September 1, 2005. Hadley first joined the Commission in 1992 and served as chairperson from 1994 until his resignation in November 1997.

Hadley is a graduate of Indiana University with a B.A. degree in Journalism. He holds a M.A. and Ph.D. from Indiana University in Political Science.

## Unofficial Advisory Opinions

This article briefly reviews questions recently addressed by the Ethics Commission staff. These opinions are not intended as a comprehensive analysis of the issue raised. For more information on whether and how this information may apply in another situation, contact your agency ethics officer or the State Ethics Commission.

---

### Opinion I: [Appearances, activities & expenses 40 IAC 2-1-7](#)

Advisory opinions are drafted by the staff of the State Ethics Commission at the request of state employees and other persons working with state agencies. Recently a company from Madison sought an advisory opinion before offering a ride in the company aircraft to an employee in the Aeronautics Division of INDOT.

#### Facts

The President of a company would like to offer an employee in the Aeronautics Division of INDOT a ride in the company's corporate aircraft. The company is a user of the Madison Municipal Airport but is not a vendor, contractor, or supplier to the Airport. The President of the company is also the President of the City of Madison Board of Aviation Commissioners (Air Board). The purpose of the trip is to discuss urgent funding issues for the upcoming year at the Airport. The INDOT employee is in a position to take official actions regarding the distribution of the federal funds that are to be discussed at the meeting.

#### Question

May the INDOT employee accept an offer of a ride by the President of the Air Board that is seeking funds for the Airport when the employee has discretion over the distribution of the federal funds?

#### Opinion

The employee's responsibilities with the Aeronautical Section of INDOT would prevent the employee from accepting the generous offer of transportation to the meeting.

---

### Opinion II: [Gifts 40 IAC 2-1-6](#)

#### Facts

A real estate company has offered a special deal to employees of a state agency who are interested in buying a new home. The company will give every employee \$1000 at closing who purchases a new home with the assistance of one of their real estate representatives. The same offer is being made to any employer that is interested in providing this apparent benefit to employees.

#### Question

Are the state employees permitted to accept the offer made by the real estate company?

## Opinion

Since the real estate company's offer extends beyond the state agency and state government, and **if** the state agency has no "business relationship" with the real estate company, the agency employees could accept the offer. However, if the state agency has a "business relationship" with the real estate company, agency employees with no discretion over the company would be prohibited from accepting the "gift" in excess of \$25 from the company unless the appointing authority would approve, in writing, the acceptance of the gift. Any employee with discretion over the company could accept nothing but a token gift such as an inexpensive pen or small memento.

---

## **Opinion III:**     [Moonlighting 40 IAC 2-1-8](#)

### Facts

A private citizen is in the process of opening a business that will operate as a not-for-profit corporation. The corporation will be seeking grants and funding from state agencies. The board of directors will be volunteers and not paid for their services.

### Question

Can the board of directors of the corporation include a person who is an employee of the state agency that provides the grants?

### Opinion

As long as the state employee's service on the board is not in any way incompatible with the employee's official duties or would not impair the employee's independence of judgment in discharging those duties, the employee may serve on the board.

---

## **Ethics Classes Open**

There's still time to register for March and April classes. To see a description of ethics classes and to register on-line, [Click here](#).



## Avoid Embarrassing (or worse) Situations!

### Take this quiz on Post-Employment Restrictions.

(But remember - Always go to the authority\* with your real life questions.)

#### True or False:

- \_\_\_1. **Post-employment restrictions** apply for the 12-month period after an officer or employee has worked personally and substantially on a particular matter for the state.
- \_\_\_2. If a former officer or employee worked personally and substantially on a particular matter for the state, the former officer or employee may not represent or assist a person on that particular matter for 12 months after the employee no longer has responsibility for that matter.
- \_\_\_3. The post-employment restriction may be waived by the state officer or appointing authority of the agency that was served by the former state officer or employee.
- \_\_\_4. A waiver must be in writing and signed by the current state officer or appointing authority.
- \_\_\_5. Only one agency has authority to interpret and enforce the law regarding post-employment restrictions for state employees.
- \_\_\_6. The State Ethics Commission is the entity that interprets and enforces the law on post-employment restrictions.
- \_\_\_7. **Post-employment restrictions** are different from **Profiteering from Public Service (a criminal offense)**.
- \_\_\_8. The law on Profiteering applies to those persons who approve, negotiate, or prepare the terms or specifications of a contract or purchase for their agency.
- \_\_\_9. \*The authority on post-employment issues is the State Ethics Commission.

---

### Answers

**All of the statements were True. Here's why:**

- 1. The Ethics Commission has defined "personally and substantially" and "particular matter." Contact the Ethics Commission office to review these terms before making decisions. Note: 12 months applies to work on "a particular matter."



# Ethics Quiz

2. “Represent” and “assist” have been defined too. Ethics Commission guidelines are to be applied.
3. A waiver is permitted if the current state officer or appointing authority of the agency determines that representation or assistance of the former state officer or former employee is not adverse to the public interest.
4. Also, it must be filed with the State Ethics Commission.
5. Well-intentioned advice by others doesn’t count. The law identifies the State Ethics Commission as the decider of these issues.
6. Just about every situation is different. Let the Commission make the call before you proceed with a new employer.
7. The Ethics Commission has no authority to waive the law on profiteering. It is a criminal law. Fines up to \$10,000 may be imposed for this offense.
8. A person who approves, negotiates, or prepares the terms or specifications of a contract or purchase for their agency shall not knowingly or intentionally obtain a financial interest in that contract or purchase for one year after they separate from employment with their agency. A person who violates this law commits a Class A infraction. [IC 35-44-1-7](#)
9. True. Avoid problems. Contact the State Ethics Commission.

---

Please send your questions or comments to: [ethics@ethics.state.in.us](mailto:ethics@ethics.state.in.us)  
or call (317) 232-3850.

Indiana State Ethics Commission 402 W. Washington St., Rm. W189  
Indianapolis, Indiana 46204

---



**R**esponsibility: to speak up - without fear of retribution - and report concerns in the workplace, including violations of laws, regulations and company policies, and seek clarification and guidance whenever there is any doubt.

– Lockheed Martin